Brief and Argument of Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

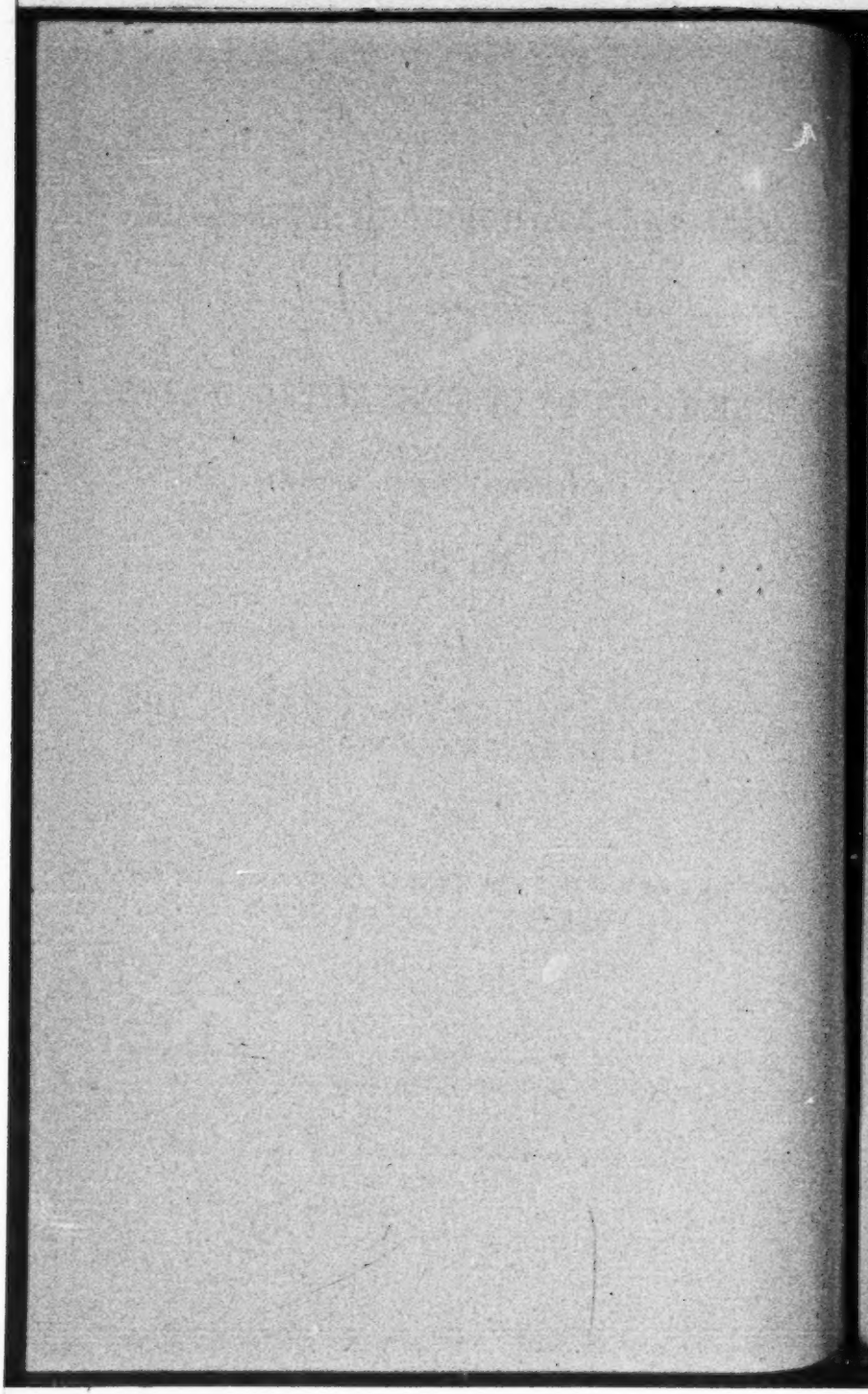
No. 50.

BERYL F. CARROLL, AUDITOR OF STATE OF THE STATE OF IOWA, APPELLANT,

vs.

THE GREENWICH INSURANCE COMPANY OF NEW YORK, ET AL, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF IOWA.



BRIEF AND ARGUMENT OF APPELLANT.

Statement of the Case.

This is an action in equity brought by the Greenwich Insurance Company and other fire insurance companies, all of which are foreign to the State of Iowa, against Beryl F. Carroll, Auditor of State of the State of Iowa, for the purpose of having sections 1754, 1755, 1756 and 1757 of the Code of Iowa declared invalid, for the reason that they infringe and violate the provisions of section 6 of Article I and section 30 or Article III of the Constitution of the State of Iowa, and that they infringe and violate section 10 of Article I of the Constitution of the United States, and Article XIV of the amendments to the Constitution of the United States; and to have the defendant Beryl F. Carroll, Auditor of the State of Iowa, and his successors in office, perpetually enjoined from enforcing the provisions of sections 1754, 1755, 1756 and 1757 against the complainants, and to enjoin the said Beryl F. Carroll, Auditor of State of the State of Iowa and his successors in office, from calling or bringing before him or them for examination under oath any officer, agent or employee of any of said complainants for any alleged violation of the provisions of said sections or either of them; and to enjoin the said Beryl F. Carroll, Auditor of State of the State of Iowa and his successors in office, from entertaining any complaint made to him or them in writing or otherwise, charging the complainants or either of them with violation of section 1754 of the Code of Iowa; and to enjoin and restrain the said Beryl F. Carroll and his successors in office from issuing any order or revoking the authority of said complainants or either of them to transact business within the State of Iowa, and from in anywise interfering with such complainants or either of them in the transaction of business in the State of Iowa, because of any alleged violation of the provisions of section 1754 of the Code.

The bill of complainants was filed in the office of the clerk of the Circuit Court of the United States for the southern district of Iowa on the 12th day of March, 1903. On the 6th day of June, 1903, the appellant, Beryl F. Carroll, filed in the office of the clerk of said court a demurrer to the bill of complainants. Afterward complainants, by leave of court, amended their bill, and an order of record was made by the judge of the circuit court that the demurrer should be held to apply to the bill as amended.

The questions presented by the bill and the demurrer are:

First. Are sections 1754, 1755, 1756 and 1757 of the Code of Iowa invalid because they infringe the provisions of section 6 of Article I, or the provisions of section 30 of Article III, of the Constitution of the State of Iowa?

Second. Are said sections of the Code of Iowa invalid because they offend the provisions of Article XIV of the amendments to the Constitution of the United States?

Third. Are said sections of the Code of Iowa invalid because repugnant to section 10 of Article I of the Constitution of the United States?

The sections of the Iowa Code which the complainants seek to have declared invalid are as follows:

"Sec. 1754. It shall be unlawful for two or more fire insurance companies doing business in this state, or for the officers, agents or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within this state; and any such company, officer, agent or employee violating this provision shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund.

Sec. 1755. The auditor of state is authorized to summon before him, for examination, under oath, any officer, agent or employee of any such company suspected of violating any of

the provisions of the preceding section, and, on complaint to him in writing, by two or more residents of this state, charging such company under oath upon their knowledge or belief with violating the provisions of the preceding section, he shall summon any officer, agent or employee of said company before him for examination under oath; if upon such examination, and that of any other witness produced and examined, he shall determine that such company is guilty of a violation of any of the provisions of the preceding section, or if any such officer, agent or employee after being duly summoned shall fail to appear or submit to examination, the auditor shall forthwith issue an order revoking the authority of such company to transact business within this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom.

Sec. 1756. Either party may appeal from the decision of the auditor, made pursuant to the preceding section, to the district court of the county where the same was made, within twenty days from the time of the rendition of such decision, by serving a written notice of such appeal on the opposite party and on the auditor, and filing with the clerk of said court a good and sufficient bond for the payment of all costs on the appeal in case the decision shall be affirmed. On such appeal said court shall try the case *de novo*, as equitable causes are tried, and on such evidence as either party may produce, and may reverse, modify or affirm the decision of the auditor.

Sec. 1757. The statements and declarations made or testimony given by any such officer, agent or employee in the investigation before the auditor, or upon the hearing and trial before the district court, as provided in the two preceding sections, shall not be used against the person making the same in any criminal prosecution against him."

Section 6 of Article I of the Constitution of the State of Iowa is as follows:

"All laws of a general nature shall have uniform operation. The general assembly shall not grant to any citizen or class of citizens privileges or immunities which in the same terms shall not equally apply to all citizens."

Section 30 of Article III of the Constitution of the State of Iowa provides:

"The general assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for state, county or road purposes;

For laying out, opening and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state; * * *"

The case was argued to His Honor Judge McPherson of the circuit court of the southern district of Iowa, and on the 19th day of October, 1903, the demurrer of defendant was by the court overruled, and the order of the court overruling the same entered of record.

On the 7th day of March, 1904, the defendant, having elected to stand upon his demurrer, and having declined to further plead to or answer the original and amended bill of the complainants, a decree was entered by the judge of said court by which the defendant Beryl F. Carroll, Auditor of State of the State of Iowa and his successors in office, were and are perpetually enjoined from enforcing the provisions of said sections of the statute of Iowa against the complainants, and from in any manner calling or bringing before him for examination under oath any officer, agent or employee of said complainants for any violation of the provisions of said sections, and from entertaining any complaint made to the defendant and his successors in office in writing or otherwise, charging the complainants or either of them with the violation of section 1754, and enjoining and restraining the defendant and his successors in office from issuing any order revoking the authority of complainants or either of them to transact business in the State of Iowa or in anywise interfering with such complainants doing business in said state.

The decree of the court further adjudged that the said de-

fendant Beryl F. Carroll, as Auditor of State of the State of Iowa, be required to pay the costs of this proceeding taxed at the sum of $———.

The defendant at the time of entering of such decree duly excepted thereto, and to each provision thereof, and on the 25th day of April, 1904, appealed from such decree to this court, and filed in the office of the clerk of the circuit court of the United States for the southern district of Iowa, his assignment of errors, which appears upon pages 32 and 33 of the record.

Errors Relied Upon.

First. That the court erred in overruling the demurrer to complainants' bill, and in not dismissing the bill.

Second. The court erred in perpetually enjoining the defendant, Beryl F. Carroll, Auditor of State of the State of Iowa, and his successors in office, from enforcing against the complainants, and each of them, the provisions of sections 1754, 1755 and 1756 of the Code of Iowa, and in enjoining and restraining the said defendant Beryl F. Carroll, Auditor of State of the State of Iowa, and his successors in office, from in any manner calling or bringing before him or them for examination under oath any officer, agent or employee of said complainants or either of them for any alleged violation of the provisions of said sections 1754, 1755 and 1756 of the Code of Iowa.

Third. The court erred in enjoining and restraining the said Beryl F. Carroll, Auditor of State of the State of Iowa, defendant herein, and his successors in office, from entertaining any complaint made to him or them, in writing or otherwise, charging any of the complainants with violation of section 1754 of the Code of Iowa.

Fourth. The court erred in enjoining and restraining the said defendant, Beryl F. Carroll, Auditor of State of the State of Iowa, and his successors in office, from issuing any order revoking the authority of any of the complainants to trans-

act the business of insurance within the State of Iowa, and from in anywise interfering with such complainants in doing business in the State of Iowa, because of any alleged violation of the provisions of said section 1754 of the Code of Iowa.

Fifth. The court erred in holding and adjudging that the provisions of sections 1754 and 1755 of the Code of Iowa violate and infringe the provisions of the Constitution of the State of Iowa, and the provisions of section 6 of Article I thereof, and in holding that said law is not uniform in its operation, and that thereby privileges and immunities are granted to citizens of the the State of Iowa other than fire insurance companies transacting business therein, which are withheld from complainants.

Sixth. The court erred in holding that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate and infringe Article XIV of the amendments to the Constitution of the United States, and deprive the complainants of liberty, property, and property rights without due process of law, and deny to said complainants the equal protection of the laws of the State of Iowa.

Seventh. The court erred in holding that the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate and infringe section 10 of Article I of the Constitution of the United States, and impair the obligation of contracts.

Eighth. The court erred in adjudging that the defendant, Beryl F. Carroll, Auditor of State of the State of Iowa, be required to pay the cost of this proceeding, and in entering judgment therefor and ordering execution to issue thereon.

BRIEF.

I.

First. The provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa do not violate or infringe section 6 of Article I of the Constitution of Iowa, as they operate equally upon every person within the relations and circumstances provided for, and the class of persons affected thereby is a

natural and proper class for legislative purposes, and not arbitrarily created by the legislature.

Cooley on Const. Lim. (6th ed.), 480;
Magoun vs. Ill. Trust & Sav. Bank, 170 U. S., 294;
Minneapolis Ry. Co. vs. Beckwith, 129 U. S., 29;
Orient Ins. Co. vs. Daggs, 172 U. S., 560;
Mo. Ry. Co. vs. Mackey, 127 U. S., 205, 209;
Kennedy vs. Ins. Co., 165 Pa. St., 183.

Second. The statute in question extends to and embraces equally all persons who fall within the classification, and is therefore valid under the state constitution.

Barbier vs. Connolly, 113 U. S., 27;
Sutton vs. State, 96 Tenn., 696;
City of Des Moines vs. Bolton, 102 N. W. Rep. (Iowa), 1045;
State vs. Garbroski, 111 Iowa, 499;
Iowa R. Land Co. vs. Soper, 39 Iowa, 112;
McAunich vs. M., etc., R. Co., 20 Iowa, 338;
Morris vs. Stout, 110 Iowa, 659.

II.

The statute in question does not contravene any of the provisions of section 30 of Article III of the Constitution of Iowa.

Smith vs. Judge, 17 Calif., 554;
French vs. Teschemaker, 24 Cal., 544.

III.

The provisions of the sections of the Iowa Code in question do not violate or infringe section 10 of Article I of the Constitution of the United States, and do not impair the obligation of existing contracts.

Edwards vs. Kearzey, 96 U. S., 603;
Denny vs. Bennett, 128 U. S., 495;
Lehigh Water Co. vs. Easton, 121 U. S., 391;
Cent. Land Co. vs. Laidley, 159 U. S., 109;
Pinney vs. Nelson, 183 U. S., 147;
Oshkosh Water Works Co. vs Oshkosh, 187 U. S., 439.

IV.

The Iowa statute does not deprive any person of liberty or property, and does not restrict or abridge the liberty of contract; nor does any provision of such statute in any manner violate or infringe any provision of the fourteenth amendment to the federal constitution.

Gibbons vs. Ogden, 9 Wheat., 1;
Morris Run Coal Co. vs. Barclay Coal Co., 68 Pa. St., 173;
Arnot vs. Pittston & Elmyra Coal Co., 68 N. Y., 558;
Cent. Ohio Salt Co. vs. Guthrie, 35 Ohio St., 666;
Craft vs. McConoughy, 79 Ill., 346;
People vs. Chicago Gas Trust Co., 130 Ill., 268;
Richardson vs. Bull, 77 Mich., 632;
Santa Clara Mill & Lumber Co. vs. Hayes, 79 Cal., 387;
India Bagging Ass'n vs. Kock, 14 La. Ann., 168;
Northern Securities Co. vs. United States, 193 U. S., 197, 339;
People vs. Sheldon, 139 N. Y., 251;
State ex rel. Atty. Gen. vs. Fireman's Fund Ins. Co., 152 Mo., 45; 45 L. R. A., 363;
State ex rel. Monnett vs. Buckeye Pipe Line Co., 61 Ohio St., 520;
Stanton vs. Allen, 5 Denio, 334;
Watson vs. Harlem & N. Y. Nav. Co., 52 How. Prac., 348;
Anderson vs. Jett, 89 Ky., 375;
Nester vs. Continental Brewing Co., 161 Pa. St., 473;
Texas Standard Oil Co. vs. Adoue, 83 Texas, 650;
Park & Sons Co. vs. National Wholesale Druggists Ass'n, 50 N. Y. Supp., 1064;
People vs. Milk Exchange, 145 N. Y., 267;
Emery vs. Ohio Candle Co., 47 Ohio St., 320;
Chapin vs. Brown Bros., 83 Iowa, 156;
DeWitt Wire Cloth Co. vs. N. J. Wire Cloth Co., 14 N. Y. Supp., 277;

United States vs. Knight Co., 156 U. S., 1;
United States vs. Freight Ass'n, 166 U. S., 290;
United States vs. Joint Traffic Ass'n, 171 U. S., 505;
Addyston Pipe & Steel Co. vs. United States, 175 U. S., 228;
Barron vs. Baltimore, 7 Pet., 247;
Fox vs. State of Ohio, 5 How., 434;
Withers vs. Buckley, 20 How., 90;
Twitchell vs. Commonwealth, 7 Wall., 326;
Pumpelly vs. Green Bay Co., 13 Wall., 176;
Spies vs. Illinois, 123 U. S., 166;
Bridge Co. vs. Dix, 6 How., 531;
State vs. Phipps, 50 Kansas, 609;
Paul vs. Virginia, 75 U. S., 168;
Mo. Ry. Co. vs. Mackey, 127 U. S., 205;
Orient Ins. Co. vs. Daggs, 172 U. S., 557;
Hooper vs. California, 155 U. S., 648.

ARGUMENT.

The errors assigned present four questions for determination by this court, which may be stated as follows:

First. Do the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate or infringe the provisions of section 6 of Article I of the Constitution of the State of Iowa?

Second. Do the provisions of said sections violate or infringe the provisions of section 30 of Article III of the Constitution of said state?

Third. Do the provisions of said sections violate or infringe the provisions of section 10 of Article I of the Constitution of the United States?

Fourth. Do the provisions of said sections violate or infringe Article XIV of the amendments to the Constitution of the United States?

These questions will be discussed in the order stated.

I.

Are the provisions of the sections of the Iowa statute referred to repugnant to section 6 of Article I of the Constitution of the State, and invalid for that reason?

First. Section 6 of Article I of the Constitution of Iowa is as follows:

"All laws of a general nature shall have uniform operation. The general assembly shall not grant to any citizen or class of citizens privileges or immunities which in the same terms shall not equally apply to all citizens."

It is contended by complainants that the Iowa statute is not uniform in its operation, that it is class legislation, and is repugnant to the provisions of the Constitution quoted, and therefore invalid.

The contention of the defendant is that the statute does not offend the provisions of the state constitution; that it operates equally upon every person within the relations and circumstances provided for; that the class of persons affected by it is a natural one, and not arbitrarily created by the legislature, and that it is therefore of sufficient uniformity to fully conform to the provisions of the constitution.

Section 1754 of the Code provides that it shall be unlawful for two or more fire insurance companies doing business in this state, or for the officers, agents or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting fire insurance business within this state; and any such company, officer, agent or employee violating this provision, shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund.

Sections 1755, 1756 and 1757 provide the method for the enforcement of the provisions of section 1754.

It is within the power of the state to distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion.

If the classification made by the Iowa legislature is a reasonable one, and based upon some difference which bears a just and proper relation to such classification, it is not an arbitrary classification by the legislature, nor is it invalid under the constitutional provision.

Mr. Cooley in his work on Constitutional Limitations says:

"The legislature may also deem it desirable to prescribe peculiar rules for the several occupations, and to establish distinctions in the rights, obligations, duties and capacities of citizens. The business of common carriers, for instance, or of bankers, may require special statutory regulations for the general benefit, and it may be matter of public policy to give laborers in one business a specific lien for their wages, when it would be impracticable or impolitic to do the same for persons engaged in some other employments. If the laws be otherwise unobjectionable, all that can be required in these cases is, that they be general in their application to the class or locality to which they apply; and they are then public in character, and of their propriety and policy the legislature must judge." Cooley on Constitutional Limitations, 6th Ed., 480.

In *Magoun vs. Illinois Trust & Savings Bank*, 170 U. S., 294, it is said:

"In other words, the state may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion. It is not without limitation, of course. 'Clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition,' said Mr. Justice Bradley, in *Bell's Gap Railway vs. Pennsylvania*, 134 U. S., 237. * * * Two principles, therefore, must be reconciled in the Illinois inheritance law if it is to be sustained, the equality of protection of the laws guaranteed by the fourteenth amendment, and the power of the state to classify persons and property. The latter principle needs further consideration. What test is there of the reasonableness of a classification — of one based upon 'some

difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection?' Legislation special in character is not forbidden by it, as we have seen. Treating mechanics as a class and giving them a lien for the amount of their work, has been held reasonable. * * * There is, therefore, no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things."

In *Minneapolis Railway Co. vs. Beckwith*, 129 U. S., 29, it is said:

"Equality of protection implies not merely equal accessibility of the courts for the prevention or redress of wrongs and the enforcement of rights, but equal exemption with others in like conditions from charges and liabilities of every kind. But the clause does not limit, nor was it designed to limit, the subjects upon which the police power of the state may be exerted. The state can now, as before, prescribe regulations for the health, good order and safety of society, and adopt such measures as will advance its interests and prosperity. And to accomplish this end special legislation must be resorted to in numerous cases, providing against accidents, disease and danger, in the varied forms in which they may come. The nature and extent of such legislation will necessarily depend upon the judgment of the legislature as to the security needed by society."

That fire insurance companies are a natural class which may be made the object of special statutory regulation for the general public benefit, has been frequently decided by this court and the courts of the several states.

Fire insurance is a class of business standing as distinctly by itself as banking, life insurance or the operation of railways. Its classification for legislative purposes is natural, reasonable and necessary.

Every state, or nearly every state in the Union has, by statutory enactment, regulated the business of fire insurance within its territory. The power of the state to make such regulation is absolutely essential to the preservation of the sovereignty of the state and to the protection of its citizens.

In *Bridge Co. vs. Dix*, 6 How., 531, it is said:

"The Constitution of the United States, although adopted by the sovereign states of this Union, and proclaimed in its own language to be the supreme law for their government, can, by no rational interpretation, be brought to conflict with this attribute in the states."

While this language was used with reference to the right of eminent domain, it applies with equal force to the right to control the internal business affairs of the state.

In *Kennedy vs. Ins. Co.*, 165 Pa. St., 183, it is said:

"Foreign insurance companies, licensed to transact business in this state, have always been considered and are in fact an essential and distinct class of corporations, justifying and requiring legislation appropriate to the class itself. If such companies, owing their existence to some authority outside and not having their principal offices within the state, are permitted to transact business here, it must necessarily be upon such terms and conditions as will enable the insurance department of the commonwealth to supervise their business operations, etc., and place them within the easy and convenient reach of process at the suit of the commonwealth or any of its citizens."

In *State vs. Phipps*, 50 Kansas, 609, it is said:

"The state has power to regulate and control, and to provide penalties for the transgression of its regulating and controlling statutes, of the business of a foreign insurance company within its boundaries."

Other cases from state courts might be cited, but the right of a state to control and regulate the business of fire insurance within its territory has been so frequently declared by this court that it is deemed unnecessary.

In *Paul vs. Virginia*, 75 U. S., 168, the power of the state legislature to regulate and control foreign insurance companies within the state, is fully recognized. With reference to such companies it is there said:

"Having no absolute right or recognition in other states, and depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course,

that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest; the whole matter rests in their discretion."

In *Missouri Railway Co. vs. Mackey*, 127 U. S., 205, it is said by Mr. Justice Field:

"It cannot be successfully contended that the state may not prescribe the liabilities under which corporations created by its laws shall conduct business in the future, where no limitation is placed upon its power in this respect by their charters. Legislation to this effect is found in the statute books of every state."

In *Hooper vs. California*, 155 U. S., 648, it is said by Mr. Justice White:

"The State of California has the power to exclude foreign insurance companies altogether from her territory, whether they were formed for the purpose of doing a fire or marine business. She has the power, if she allows any such companies to enter her confines, to determine the conditions on which the entry shall be made. And, as a necessary consequence of her possession of these powers, she has the right to enforce any conditions imposed by her laws as preliminary to the transaction of business within her confines by a foreign corporation, whether the business is to be carried on through officers or through ordinary agents of the company, and she has also the further right to prohibit a citizen from contracting within her jurisdiction with any foreign company which has not acquired the privilege of engaging in business therein, either in his own behalf or through an agent empowered to that end. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the territory of the state which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent, subject always, of course, to the paramount authority of the Constitution of the United States."

The question of the power of the state to classify fire insurance companies for legislative purposes arose in *Orient Ins.*

Co. vs. Daggs, 172 U. S., 560. The decision of the case involved the validity of a Missouri statute requiring fire insurance companies doing business in that state to pay the face value of their policies. It was contended by the insurance companies that the Missouri statute was class legislation; that fire insurance companies were singled out from other corporations as the objects of hostile legislation; that the classification was arbitrary and unnatural; that it discriminated against fire insurance companies and did not affect alike all persons similarly situated; that the statute abridged the liberty of contract, and was for these reasons invalid. In determining the question thus presented, Mr. Justice McKenna, speaking for this court, said:

"It is not necessary to state the reasoning upon which classification by legislation is based or justified. This court has had many occasions to do so and only lately reviewed the subject in *Magoun vs. Illinois Trust and Savings Bank*, 170 U. S., 283. We said in that case that 'the state may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion.' And this because of the function of legislation and the purposes to which it is addressed. Classification for such purposes is not invalid because not depending on scientific or marked differences in things or persons or in their relations. It suffices if it is practical, and is not reviewable unless palpably arbitrary. We see many differences between fire insurance and other insurance, both to the insurer and the insured—differences in the elements insured against and the possible relation of the parties to them, producing consequences which may justify if not demand different legislative treatment. Of course it is not for us to debate the policy of any particular treatment, and the freedom of discretion which we have said the state has is exhibited by analagous if not exact examples to the Missouri statute in *Railway Company vs. Mackey*, 127 U. S., 204, and in *Minneapolis & St. Louis Railway vs. Beckwith*, 129 U. S., 26. * * "That which a state may do with corporations of its own creation it may do with foreign corporations admitted into the state. * * * The power of a state to impose conditions upon foreign corporations is certainly as extensive as the power over domestic corporations, and is fully explained in *Hooper vs. California*, 155 U. S., 648, and need not be repeated."

Under these decisions there is no escape from the conclusion that it is within the power of the Iowa legislature to classify fire insurance companies transacting business within the state for legislative purposes, and to control and regulate such business within the territorial limits of the state. In passing the statute under consideration the state simply exercised its power of sovereignty in classifying a business for legislative purposes and in attempting to regulate and control such business. The statute is not open to the objection that it is class legislation or that the state has exceeded its power.

Second. Does the statute in question extend to and embrace equally all persons who fall within the classification?

If it does, it is a sufficient compliance with the constitutional provision.

In *Barbier vs. Connolly,* 113 U. S., 27, it is said:

"Class legislation discriminating against some and favoring others is prohibited, but legislation which in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

The rule stated by the supreme court of Tennessee in *Sutton vs. State,* 96 Tenn., 696, and adopted by the supreme court of Iowa in *State vs. Garbroski,* 111 Iowa, 499, clearly and concisely distinguishes constitutional from unconstitutional legislation, where the enactment is applicable to a particular class. The rule is stated as follows:

"First, it must be so formed as to extend to and embrace equally all persons who are or may be in like situation or circumstances; and, secondly, the classification must be natural and reasonable, and not arbitrary or capricious."

In the recent case of the *City of Des Moines vs. Bolton,* 102 N. W. Rep., 1045, it is said:

"The constitutional requirement that all laws of a general nature shall have a uniform operation means that every law shall have a uniform operation upon all citizens, persons or things of any class upon which it purports to act and that there shall not be granted to any person or class of persons privi-

leges which upon the same terms may not be enjoyed by all. So an act that applies to and embraces all of a class of persons who stand in the same condition or relation, is a general and not special law within the meaning of the Constitution, as uniformity is obtained by its operation on all persons in like condition. *Iowa R. Land Co. vs. Soper*, 39 Iowa, 112; *McAunich vs. M., Etc., R. Co.*, 20 Iowa, 338; *Morris vs. Stout*, 110 Iowa, 659 (78 N. W., 834; 50 L. R. A., 97). This general rule is subject only to the exception that the classification shall not be purely arbitrary or unreasonable. Cooley's Const. Lim., 481, *et seq.*; *State of Iowa vs. Garbroski*, 111 Iowa, 496."

This statement of the learned judge who wrote the opinion is a clear enunciation of the rule governing legislation of this character, and is in harmony with all the decisions of the various courts upon the question. The statute embraces all fire insurance companies, their officers, agents and employees doing business within the State of Iowa. None is excluded, and the statute acts equally and impartially upon all. They are grouped in a single class for legislative purposes, and the act is applicable to every corporation and person who falls within that class.

Under these authorities it is respectfully urged that it must be held by this court:

That fire insurance companies are a proper and natural class for legislative purposes.

That the statute in question bears equally upon all persons who fall within the class.

That it does not infringe the provisions of section 6 of Article I of the Constitution of the State.

II.

Is the statute in question in contravention of any of the provisions of section 30 of Article III of the Constitution of Iowa?

The provisions of that section, as far as they relate to the question presented, are as follows:

"The general assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for state, county or road purposes;

For laying out, opening and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be applicable, all laws shall be general and of uniform operation throughout the state; * * *"

Certain subjects are named in this constitutional provision as to which the legislature is forbidden to pass local or special laws.

It is contended by complainants that the act of the Iowa legislature is a general law, and that it offends the last clause of the constitutional provision quoted, for the reason that it is not of uniform operation throughout the state.

That it is a general law, is true, and it is also true that it is of uniform operation throughout the state, within the meaning of the constitutional provision. The language of the constitutional provision must be carefully noted. It is not that laws shall be universal or general in their application to the same subject, nor is it even that all laws of a general nature shall be universal or general in their application to such subjects. The provision is that laws of a general nature shall be uniform in their application; that is, that such laws shall bear equally in their burdens and benefits upon persons standing in the same relation.

The clear meaning of the provision is that every law of a general nature shall have a uniform operation upon the citizens, or persons, or things, of any class affected by it, and that the legislature shall not grant to any citizen or class of citizens privileges which upon the same terms shall not equally belong to all citizens.

Smith vs. Judge, 17 Calif., 554;

French vs. Teschemaker, 24 Calif., 544.

The California cases are cited for the reason that the constitutional provision under consideration was adopted by the State of California from the Constitution of Iowa, and its interpretation by the California court is for that reason authoritative.

The statute is state wide in its operation. It bears equally and uniformly upon every fire insurance company in the state.

The regulation of the business of fire insurance companies is an important subject of state legislation. It is one of the great variety of subjects requiring statutory provisions peculiar to itself. It has been forcefully said by an eminent law writer that generic subjects may be divided and subdivided into as many classes as require this peculiar legislation. Thus laws relating to the people, for certain purposes, extend to all alike, as for protection of person and property; for other purposes they are divided into classes, as voters, sane and insane persons, minors, husbands and wives, parents and children, etc. Property is subject to division into classes. Nearly every matter of public concern is divisible, and division is necessary to methodical legislation.

If, therefore, the act under consideration extends to all parts of the state in its operation, and includes and embraces in its provisions all persons and corporations transacting fire insurance business within the state, it is a general law of uniform operation throughout the state, and in harmony with the provisions of the constitution quoted.

III.

Do the provisions of sections 1754, 1755, 1756 and 1757 of the Code of Iowa violate or infringe section 10 of article I of the Constitution of the United States?

The clause of the constitution as to which it is claimed the Iowa statute is repugnant, is that which declares that no state shall pass any law impairing the obligation of contracts.

The contention of complainants appears to be that they are

prevented by the Iowa statute from entering into future contracts in the prosecution of their business in the State of Iowa, and that because so prevented the statute infringes the provision of the Federal Constitution.

It is not alleged in the bill that complainants or either of them entered into any contract prior to the passage of the Iowa statute, which was or is impaired by such enactment.

The question presented, therefore, is whether a state statute, which prohibits the making of certain contracts in the future, is a violation of the provisions of section 10 of Article I of the Federal Constitution, and that question has been determined by this court adversely to the contention of complainants.

In *Edwards vs. Kearzey*, 96 U. S., 603, in reference to this constitutional provision, it is said:

"The inhibition of the Constitution is wholly prospective. The states may legislate as to contracts thereafter made, as they may see fit. It is only those in existence when the hostile law is passed that are protected from its effect."

In *Denny vs. Bennett*, 128 U. S., 495, the principle announced in *Edwards vs. Kearzey* is reaffirmed, and the principle as stated in the latter case is quoted with approval by Mr. Justice Miller in announcing the opinion of the court.

In *Denny vs. Bennett*, it is further said:

"No reason has been suggested why the legislature could not exempt all interests in landed estate from execution and sale under judgments against the owner, and perhaps all of his personal property. However this may be, it is very certain that the established construction of the Constitution of the United States against impairing the obligation of contracts requires that statutes of this class shall be construed to be parts of all contracts made when they are in existence, and therefore cannot be held to impair their obligation."

In *Lehigh Water Co. vs. Easton*, 121 U. S., 391, it is said by Mr. Justice Harlan, speaking for the court:

"Obviously, this clause cannot be invoked for the reversal of the judgment below. It is equally clear that the law of the

state to which the constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired."

The same principle is recognized in *Central Land Co. vs. Laidley*, 159 U. S., 109, and in *Pinney vs. Nelson*, 183 U. S., 147, in which it is said by Mr. Justice Brewer:

"It is equally clear that the law of the state to which the Constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired. *Lehigh Water Co. vs. Easton*, 121 U. S., 388, 391. See, also, *Central Land Co. vs. Laidley*, 159 U. S., 103, 111; *McCullough vs. Virginia*, 172 U. S., 102, 116."

In *Oshkosh Water Works Co. vs Oshkosh*, 187 U. S., 439, it is said:

"It is well settled that while, in a general sense, the laws in force at the time a contract is made enter into its obligation, parties have no vested right in the particular remedies or modes of procedure then existing. It is true the legislature may not withdraw all remedies, and thus, in effect, destroy the contract; nor may it impose such new restrictions or conditions as would materially delay or embarrass the enforcement of rights under the contract according to the usual course of justice as established when the contract was made. Neither could be done without impairing the obligation of the contract. But it is equally well settled that the legislature may modify or change existing remedies, or prescribe new modes of procedure, without impairing the obligation of contracts, provided a substantial or efficacious remedy remains or is given, by means of which a party can enforce his rights under the contract."

Under the rule of law as enunciated by this court, it is clear that the contention of complainants, that the Iowa statute violates the provisions of section 10 of Article I of the Constitution of the United States, is without force. No contract was entered into by complainants or either of them with any person or persons prior to the enactment of the statute, and no obligation of any contract previously made was impaired by the passage of the act. The state legislature was and is absolutely free to legislate as to future contracts, and this it has done by forbidding the entering into contracts between fire in-

surance corporations whereby a combination is created as to the business of fire insurance in the state. This it had the right to do, and a statute so providing in nowise offends the constitutional provision.

IV.

Does the Iowa statute offend Article XIV of the amendments to the Federal Constitution?

It is the contention of complainants that the statute infringes the provisions of the fourteenth amendment, for the reason that it takes away from fire insurance companies transacting business in the State of Iowa, the liberty of contract.

The provision of the fourteenth amendment to the Federal Constitution which is claimed to be violated by the Iowa statute, is in these words:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It is of course conceded that any act of the state legislature which restricts or abridges the liberty of contract guaranteed by section 1 of the fourteenth article of the amendments to the Constitution, is invalid.

If sections 1754, 1755, 1756 and 1757 of the Iowa statute restrict or abridge the liberty of contract guaranteed by that amendment they are invalid. On the other hand, if the liberty of contract is not denied the complainants, and if that right is in no manner restricted or abridged by the provisions of the statute, it is not invalid because in conflict with the provisions of the fourteenth article of the amendments to the Federal Constitution, and can be enforced by the state authorities.

It is undoubtedly true, as said in *Lawson vs. Steele*, 150 U. S., 133, that "the legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private

business or impose unusual or unnecessary restrictions upon lawful occupations." But within its jurisdiction, a state legislature may enact a statute prohibiting contracts and combinations which are in restraint of trade and which tend to prevent competition in any class of business carried on within the state.

The Iowa legislature has not undertaken arbitrarily to interfere with private business, or impose any unusual or unnecessary restriction upon any lawful business.

The purpose of the statute, and the end sought to be accomplished by its enactment, is to regulate the business of fire insurance in the state, and to prevent fire insurance companies doing business therein from entering into a contract or combination whereby the right of such companies to enter into lawful contracts with those desiring fire insurance would be restricted and abridged, and whereby competition would be prevented and the cost of fire insurance increased within the state.

In other words, the statute simply prohibits any fire insurance company transacting business in Iowa from entering into an agreement with any other fire insurance company transacting business in the state, if such agreement would restrict the liberty of contract of the companies entering into the same, or would prevent such companies from contracting with persons desiring fire insurance in the state except upon such terms as the companies entering into the contract should agree.

It is designed to maintain fair and lawful competition between fire insurance companies transacting business within the state, and to prevent a combination between such companies which would be harmful to the citizens of the state.

It may be fairly assumed that an evil existed which was sought to be remedied by the enactment of the Iowa statute, and that that evil was the combination of fire insurance companies in the state for the purpose of increasing the cost of insurance.

If the Iowa statute goes no further than to attempt to prevent a combination between corporations transacting the same class of business within the state, and to prevent such corporations from entering into an agreement whereby their liberty to contract with citizens of the state is restricted or abridged, the legislature has not exceeded its constitutional power, and the statute is valid.

The power of the state to regulate and control internal trade, commerce and business, as distinguished from the external concerns of the nation and interstate commerce, was early recognized by this court in *Gibbons vs. Ogden*, 9 Wheat., 1. Mr. Chief Justice Marshall, in delivering the opinion of the court in that case, said:

"The genius and character of the whole government seems to be that its action is to be applied to all external concerns of the nation, and to those internal concerns which affect the states generally; but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

The principle announced by Mr. Chief Justice Marshall has been since re-affirmed by this court in *New York vs. Miln*, 11 Pet., 133; *Holmes vs. Jennison*, 14 Pet., 616; Licensed Cases, 5 How., 628; Slaughter House Cases, 16 Wall., 63; *Peete vs. Morgan*, 19 Wall., 582; *United States vs. Cruikshank*, 92 U. S., 551; *Leisy vs. Hardin*, 135 U. S., 131; *Plumley vs. Massachusetts*, 155 U. S., 479; *Geer vs. Connecticut*, 161 U. S., 534; *Hennington vs. Georgia*, 163 U. S., 308. It has been recognized by many of the state courts, and acted upon by many of the state legislatures.

In principle there can be no difference between an illegal combination to increase the cost of fire insurance, and such a combination to increase the cost of coal or any other commodity. Fire insurance is as necessary to the business world as is any manufactured product. Numerous cases have been decided by the state courts, many of which are cited with ap-

proval by this court, in which such combinations are declared illegal and statutes prohibiting the same are held not to be in violation of the fourteenth amendment to the Constitution.

The question of the legality of such combinations was presented to the supreme court of Pennsylvania in *Morris Run Coal Co. vs. Barclay Co.*, 68 Pa. St., 173, where certain coal companies were seeking to control, within a large territory, the entire market for bituminous coal. In passing upon the validity of their agreement the supreme court of Pennsylvania said:

"When competition is left free, every individual error or folly will generally find a correction in the conduct of others. But here is a combination of all the companies operating in the Blossburg and Barclay mining regions, and controlling their entire productions. They have combined together to govern the supply and the price of coal in all the markets from the Hudson to the Mississippi rivers, and from Pennsylvania to the Lakes. This combination has a power in its confederated form which no individual action can confer. The public interest must succumb to it, for it has left no competition free to correct its baleful influence. When the supply of coal is suspended the demand for it becomes importunate, and prices must rise. Or if the supply goes forward, the prices fixed by the confederates must accompany it. The domestic hearth, the furnaces of the iron master and the fires of the manufacturer all feel the restraint, while many dependent hands are paralyzed and hungry mouths are stinted. The influence of lack of supply or a rise in the price of an article of such prime necessity cannot be measured. It permeates the entire mass of the community, and leaves few of its members untouched by its withering blight. Such a combination is more than a contract; it is an offense. * * * In all such combinations where the purpose is injurious or unlawful, the gist of the offense is the conspiracy. Men can often do by the *combination* of many what severally no one could accomplish, and even what when done by one would be innocent. * * * There is a potency in numbers when combined, which the law cannot overlook, where injury is the consequence."

The same principle is announced by the New York Court of Appeals in *Arnot vs. Pittston & Elmyra Coal Co.*, 68 N. Y., 558, in which it is said:

"A combination to effect such a purpose is inimical to the interests of the public, and that all contracts designed to effect such an end are contrary to public policy, and therefore illegal."

In passing upon a like question, the supreme court of Ohio, in *Central Ohio Salt Co. vs. Guthrie*, 35 Ohio St., 666, said:

"It is no answer to say that competition in the salt trade was not in fact destroyed, or that the price of the commodity was not unreasonably advanced. Courts will not stop to inquire as to the degree of injury inflicted upon the public; it is enough to know that the inevitable tendency of such contracts is injurious to the public."

In *Craft vs. McConoughy*, 79 Ill., 346, in passing upon the validity of a combination among grain dealers entered into for the purpose of stifling competition, the supreme court of Illinois said:

"So long as competition was free, the interest of the public was safe. The laws of trade, in connection with the rigor of competition, was all the guaranty the public required, but the secret combination, created by the contract, destroyed all competition and created a monopoly against which the public interest had no protection."

The case of the *People vs. Chicago Gas Trust Co.*, 130 Ill., 268, involved the validity of the organization of a gas corporation which obtained a monopoly in the business of furnishing illuminating gas in the city of Chicago, by buying the stock of four other gas companies. In passing upon the validity of such an organization, the supreme court of Illinois said:

"Of what avail is it that any number of gas companies may be formed under the general incorporation law, if a giant trust company can be clothed with the power of buying up and holding the stock and property of such companies, and, through the control thereby attained, can direct all their operations and weld them into one huge combination?"

These cases, and *Richardson vs. Bull*, 77 Mich., 632, *Santa Clara Mill & Lumber Co. vs. Hayes*, 76 Cal., 387, and *India Bagging Ass'n vs. Kock*, 14 La. Ann., 168, are cited with approval by this court in *Northern Securities Co. vs. United States*, 193 U. S., 197, 339, *et seq.*

Section 168 of the Penal Code of New York makes it a misdemeanor for two or more persons to conspire to commit any act injurious to public health, to public morals, or to trade or commerce, or for the perversion or obstruction of public justice, or the due administration of the law.

In *People vs. Sheldon*, 139 N. Y., 251, an agreement entered into by the coal dealers of Lockport for the purpose of making a uniform price upon anthracite coal in that city, was held to be a misdemeanor under the New York statute, although the price of coal within the city of Lockport had not been increased by such combination.

Mr. Chief Justice Andrews in delivering the opinion of the court, said:

"If a combination between independent dealers, to prevent competition between themselves in the sale of an article of prime necessity, is, in the contemplation of the law, an act inimical to trade or commerce, whatever may be done under and in pursuance of it, and although the object of the combination is merely the due protection of the parties to it against ruinous rivalry, and no attempt is made to charge undue or excessive prices, then the indictment was sustained by proof. * * * But the question here does not, we think, turn on the point whether the agreement between the retail dealers in coal did, as matter of fact, result in injury to the public or to the community in Lockport. The question is, was the agreement, in view of what might have been done under it, and the fact that it was an agreement the effect of which was to prevent competition among the coal dealers, one upon which the law affixes the brand of condemnation."

In *State ex rel. Attorney General vs. Fireman's Fund Ins. Co.*, 152 Mo., 45 (45 L. R. A., 363), the question of the validity of a statute identical in purpose and similar in language to the provisions of the Iowa statute under consideration, came before the supreme court of Missouri for determination.

The fire insurance companies transacting business in Missouri challenged the validity of the statute upon the ground that it violated the provisions of the fourteenth amendment to the Federal Constitution. The statute is too long to be set

out in the argument, and will be found in the opinion of the Missouri court. In passing upon its validity it is said by that court:

"It is claimed that section 30 of Article II of the constitution of Missouri provides that 'no person shall be deprived of life, liberty, or property without due process of law,' and that this act violates that provision, because 'it renders it unlawful for defendants to contract or agree among themselves, or with the agents of other insurance companies, or for their agents to contract and agree among themselves, for the reasonable adjustment and maintenance of rates of premium to be charged for insurance against fire, lightning, or storm in this state.' This is a total misapprehension of the act. It does not prohibit any company, or the agent of any company, from contracting with any person who desires to insure his property upon any terms they two may agree upon. This is the extent and true meaning of the right to contract. It does prohibit any company, by itself or through its agents, contracting with any other company or its agent not to contract with the insured except upon terms which such insurance companies or their agents have previously established. In other words, it protects the company against the temptations of a trust or monopoly by refusing to permit it to strip itself of the power to freely contract, for under the arrangement shown in this case the applicant for insurance is free to contract, but the company and its agent has already limited and qualified its power by its previous contract with another company or its agent. The law has made this provision more out of regard for the otherwise helpless insurer than from tender consideration for the insurance company, but it incidentally preserves what it is here claimed it denies,—the free, unrestrained power to contract by both parties to it. Such laws have not only been adjudged constitutional by the supreme court of the United States (citing cases), and by the United States Court of Appeals (citing cases), but the principles they announce have been expressly sanctioned by the supreme courts of New York, of Pennsylvania, of Ohio, of Kentucky, of Iowa, of Illinois, of Wisconsin, of California, of Texas, and of Louisiana. There is no more merit in this contention than there would be that a law was unconstitutional which prohibited two or more persons from conspiring to commit murder, or burglary, or any other felony. There is no such thing in civilized society as the unrestrained power to contract. Every man surrenders some of

his individual rights when he associates with or becomes a part of any society or government, and the power of the government is complete to legislate so that, while according to every man the fullest possible liberty to do what he pleases with his own, he must not interfere with the similar right of others. This principle underlies and runs through all governments and societies, and is the corner stone of the police power of the state."

In *State ex rel Monnett vs. Buckeye Pipe Line Co.*, 61 Ohio St., 520, the validity of an Ohio statute prohibiting combinations made for the purpose of restricting trade or commerce, or to limit production or increase the price of commodities, was presented to the supreme court of Ohio for determination. In passing upon the power of a state to enact and enforce a statute prohibiting a combination by persons or corporations for the purpose of restricting trade or commerce, or for the purpose of limiting production or increasing the price of any commodity ,the supreme court of Ohio said:

"The contract which we are asked to denounce is not incidental to the sale of property or any interest therein. It does not concern the good will of any business. * * * In the subject of the contract, the interests of the contracting parties are not adverse; they are not even diverse. The agreement, according to the allegations of the petition, has no purpose whatever except to prevent competition in the production, transportation and refining of petroleum, to the end that there may be received from the consumers of its products higher prices than would prevail under the condition of open competition. Counsel for the defendants admit that such a contract is within the inhibitions of the act, but deny the power of the legislature to inhibit it. Laws of this general character were entirely familiar to our English ancestors and to those who framed the American Constitution. In view of the omnipotence of the English parliament, such enactments do not, of course, furnish a standard for the validity of enactments passed by our legislatures, whose powers are subject to defined limitations. They do, however, show that such real or supposed invasion of the interests of the public was a well known subject for the exercise of legislative power. The definite proposition of counsel upon this point is that although the act is an exercise of legislative power, it transcends the provision of the State and Federal Constitutions which ren-

der inviolable the rights of liberty and property, which include the right to make contracts. It would be difficult to place too high an estimate upon these guaranties, and they include the right to make contracts. But it is settled that these guaranties are themselves limited by the public welfare or the exercise of police power. Although the power may not be conclusively defined, its nature and attributes have been the subject of much investigation. In all considerate discussions of the subject, it is conceded that in the exercise of this power, the legislature can prohibit only those uses of property which are hurtful to the public, and the inhibited use must be hurtful in a legal sense.

"That contracts like these are hurtful in that sense has been held in more cases than it would be practicable to cite. They abound throughout nearly three centuries of the development and administration of the common law in England and America. We cite, because of their full consideration of the subject to their direct application to legislation of this character, *United States vs. The Trans-Mo. Freight Association*, 166 U. S., 290; *United States vs. The Joint Traffic Association*, 171 U. S., 505; *United States vs. The Addyston Pipe and Steel Co.*, 54 U. S. App., 723. These cases are applicable since the provisions of the federal anti-trust statute are not substantially different from those of the Ohio act, which are brought under consideration in these cases, and there is no substantial difference between the contracts or constitutional provisions involved. That the contracts there considered were in restraint of commerce between states, served only to bring the subject within federal jurisdiction. The considerations affecting the validity of the legislation are in all respects as applicable here as there. Since the contract alleged in these petitions is for the sole purpose of restraining trade or limiting competition, we find no decision which doubts that they are in a legal sense hurtful to the public. There appear to be differences of opinion respecting the test of the reasonableness of contracts of sale where the good will of a business is in part the subject of the transaction and there are restraints imposed upon the vendor to secure the purchaser in the subject of the sale. But such doubts do not extend to contracts whose only purpose is to impose such restraints. Such contracts have been uniformly held to be unlawful. They cannot be reasonable in a sense which would bring the right to make them within the protection of any guaranty of either the State or Federal Constitution."

In *Stanton vs. Allen,* 5 Denio, 334, an agreement whereby a large portion of the proprietors of boats of certain canals in New York regulated the rates of freight and passage by a uniform scale which was established by a committee selected from among the proprietors, and whereby it was provided that the proprietors' business should be divided in proportion to the number of boats employed by each proprietor, and that members should not engage in similar business outside the association, was held to be illegal upon the grounds that the tendency of such agreement was, (1) to increase prices; (2) to prevent competition.

In *Watson vs. Harlem & N. Y. Nav. Co.,* 52 How Prac., 348, where rival and competing steamboat companies, organized under the laws of the State of New York, acted together and entered into an agreement for the purpose of running their boats upon joint account, thereby making a complete union of the interest of the companies, it was held to be an illegal combination under the New York statute.

It was also held in *Anderson vs. Jett,* 89 Ky., 375, where owners of two competing steamboats entered into an agreement that they would thereafter share in fixed proportions in the net profits of both boats, that such an agreement was invalid under the Kentucky statute.

So where a number of commercial firms entered into an agreement not to sell any India cotton bagging for a specified time, except with the consent of a majority of the combination, the agreement was held to be void under the Louisiana statute in *India Bagging Association vs. Kock,* 14 La. Ann., 164.

In *Craft vs. McConoughy,* 79 Ill., 346, an agreement between certain grain dealers, the object of which was to form a secret combination to suppress competition and enable the parties to control the price of grain, rates of storage, and shipment, was held to be illegal by the Illinois court.

In *Nester vs. Continental Brewing Co.,* 161 Pa. St., 473, a contract, entered into by forty-five brewing firms of the city of Philadelphia for the purpose of regulating and controlling

the price of beer within that city and the adjoining territory, was held to be illegal upon the grounds (1) that it was a combination in restraint of trade tending to destroy competition, and to create a monopoly in an article of daily consumption; (2) that the power given to the pool to arbitrarily fix the price necessarily controlled production and was contrary to public policy.

In *Texas Standard Oil Co. vs. Adoue,* 83 Texas, 650, a contract between five cotton seed oil mills fixing prices of cotton seed and naming the markets wherein each mill was to buy, and guaranteeing certain profits to each mill, was held to be illegal and void for the reasons that the prices paid for cotton seed by the parties to the agreement were arbitrarily fixed without reference to the market, and were changed only by mutual consent; that the selling prices of the products of the mills were arbitrarily fixed, and each party to the agreement was expressly prohibited from selling its products at less than the minimum price so fixed.

In *John D. Parke & Sons Co. vs. Nat. Wholesale Druggist Association,* 50 N. Y. Supp., 1064, a contract between a large number of wholesale druggists and manufacturers of proprietary medicines, by which a combination was formed called the Druggists' Association for Mutual Benefit and Protection, was held to be void because in restraint of trade.

In *People vs. Milk Exchange,* 145 N. Y., 267, it was held that an agreement between a large number of milk dealers and parties engaged in the creamery and milk business in the State of New York, the object of which was to fix the price at which milk should be purchased by the stockholders of the company who were the dealers, was invalid because in violation of the New York statute.

In *Emory vs. Ohio Candle Co.,* 47 Ohio St., 320, an unincorporated association was organized called the Candle Manufacturers' Association, which included the manufacturers of ninety-five per cent of a certain variety of candles in a certain portion of the United States. The purpose of the organization was to increase the price and decrease the manufacture

of candles in the territory covered by the agreement. Each member of the association was required to pay into its treasury two and one-half cents on every pound of candles disposed of on his own account within the territory, but was not bound to operate his factory, and whether he did or not, he received at stated times his portion of the profits of the pool, which was based upon the business that had been done by him in previous years; thus making it to the interest of each member to operate his factory when the price of candles was high, and to remain idle when the price was low. The agreement was by the Ohio court held to be invalid and void under the statute of that state.

So a contract between salt producers, made for the purpose of regulating the price and grades of salt, and binding each member to sell salt only at retail, and to actual consumers at the place of manufacture, and at such prices as may be fixed by the directors of the association from time to time, was held to be void as against public policy and as tending to establish a monopoly and destroying competition in trade, in *Central Ohio Salt Co. vs. Guthrie,* 35 Ohio St., 666.

In *Chapin vs. Brown Bros.,* 83 Iowa, 156, where certain local grocerymen in a small town in Iowa entered into an agreement whereby they pledged themselves to buy no more butter and to take no more butter in trade, except for family use, it was held that such agreement was void because against public policy.

In *Santa Clara Valley Mill & Lumber Co. vs. Hayes,* 76 Cal., 387, a combination among manufacturers of lumber in a certain district of California was effected as follows: One of the companies owning certain saw mills leased all the mills which it could, and, where leases could not be made, it entered into contracts with the parties owning the mills whereby they agreed to make and deliver to the corporation a certain amount of lumber at a certain price, and also agreed not to manufacture and sell any lumber in certain specified counties during the period covered by the agreement to any other party. The organization of the corporation and its contract

with the manufacturers of lumber were held to be void as against public policy.

In *DeWitt Wire Cloth Co. vs. N. J. Wire Cloth Co.*, 14 N. Y. Supp., 277, three corporations and two partnerships engaged in transportation between Chicago and the Atlantic a combination for the purpose of regulating the price of their products. They formed an association and agreed to buy by certain schedule of prices and engaged that they would sell no cloth at less than the prices set forth in such schedule. To insure the observance of the agreement they bound themselves to its performance by heavy penalties. The agreement was held to be in restraint of trade, against public policy, and void.

These decisions of the state courts are not cited as being binding upon this court, and may perhaps not be considered authority. They are referred to for the purpose of showing that statutes of the character of the one in controversy have been enacted by many of the states, and that they have, universally, been held to be valid by the state courts.

The act of congress of July 2, 1890, entitled, An act to protect trade and commerce against unlawful restraints and monopolies, commonly known as the Anti-trust Act, has for its object the same result sought to be attained by the acts of the legislatures of the various states; that is, to prevent combinations which shall smother competition and increase the price of commodities by decreasing the production thereof. The principle involved in the act of congress and that in the acts of the state legislatures is identical.

Within its territory and as to its internal business and commerce, the state, within the limits of the State and Federal Constitution, is supreme.

The trade and commerce among the different states is within the exclusive control of congress under the interstate commerce clause of the Federal Constitution. The difference between the powers which may be exercised by the states, and

those which may be exercised by the general government, is a difference as to the sphere in which the respective powers may be exercised, and not as to the principle involved.

A state statute which abridges the liberty of contract guaranteed by the fourteenth amendment is void for the same reason that an act of congress is void which restricts the liberty of contract guaranteed by the fifth amendment to the Federal Constitution.

The clause of the fifth amendment to the Federal Constitution which declares that no person shall be deprived of life, liberty or property without due process of law, is a constitutional restraint upon the powers of congress, precisely as the like provision contained in the fourteenth amendment is a restraint upon the powers of the state legislatures. The one is applicable alone to the general government; the other to state governments.

The principle that the provisions of the fifth amendment to the Federal Constitution are applicable to the general government, and are not a restriction upon the powers of the states, was early announced by this court in *Barron vs. Baltimore*, 7 Pet., 247, in these words:

"The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a Constitution for itself, and in that Constitution provided such limitations and restrictions on the powers of its particular government, as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily, applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes.

"If these propositions be correct, the fifth amendment must

be understood as restraining the power of the general government, not as applicable to the states."

In *Fox vs. State of Ohio,* 5 How., 434, Mr. Justice Daniels, speaking for the court, said:

"The prohibition alluded to as contained in the amendments to the Constitution, as well as others with which it is associated in those articles, were not designed as limits upon the state governments in reference to their own citizens. They are exclusively restrictions upon federal power, intended to prevent interference with the rights of the states, and of their citizens."

The doctrine announced in *Barron vs. Baltimore* was reaffirmed and emphasized in *Withers vs. Buckley,* 20 How., 90.

In *Twitchell vs. Commonwealth,* 7 Wall., 326, Mr. Chief Justice Chase, in referring to the case of *Barron vs. Baltimore,* said:

"And this judgment has since been frequently reiterated, and always without dissent.

"That they were not designed as limits upon the state governments in reference to their own citizens, but exclusively as restrictions upon federal power, was declared in *Fox vs. Ohio,* to be the only rational and intelligent interpretation which these amendments can have."

In *Pumpelly vs. Green Bay Co.,* 13 Wall., 176, it is said by Mr. Justice Miller:

"For though the Constitution of the United States provides that property shall not be taken for public use without just compensation, it is well settled that this is a limitation on the power of the federal government, and not on the states."

In *Spies vs. Illinois,* 123 U. S., 166, Mr. Chief Justice Waite, speaking for the court, said:

"That the first ten articles of amendment were not intended to limit the powers of the state governments in respect to their own people, but to operate on the national government alone, was decided more than half a century ago, and that decision has been steadily adhered to since."

It is unnecessary in this connection to either cite or quote

further authorities upon the question. It is well settled by many decisions of this court that the provisions of the fifth amendment declaring that no person shall be deprived of life, liberty and property without due process of law, operates upon the national government with the same force and with the same effect as the like provision of the fourteenth amendment operates upon the state governments.

It therefore follows, as a logical conclusion, if an act of congress prohibiting unlawful restraints and monopolies does not infringe the provisions of the fifth amendment to the federal constitution, and is valid and enforcible where such combinations and monopolies interfere with interstate commerce, a state statute prohibiting such combinations within the territory of the state and as to the internal trade and commerce of the state, cannot be held invalid because it offends the fourteenth amendment of the Federal Constitution.

The decisions of this court, holding the Sherman act to be valid and enforcible as to all combinations and monopolies in restraint of trade which extinguish competition between persons or corporations engaged in interstate trade or commerce, are, therefore, authority upon the question of the validity of the Iowa statute, and will be briefly referred to in this connection.

In *United States vs. Knight Co.*, 156 U. S., 1, it was held that a contract, amounting to a combination between the American Sugar Refining Co. and four Philadelphia sugar refineries, was not prohibited by the Sherman act, for the reason that it was not in restraint of interstate commerce, and therefore did not fall within the provisions of the act of congress. In delivering the opinion of the court, Mr. Chief Justice Fuller, said:

"All the authorities agree that in order to vitiate a contract of combination, it is not essential that this result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

In *United States vs. Freight Association*, 166 U. S., 290, an

agreement between certain railway companies, designed to prevent competition in carrying freight over their respective lines, was held to be within the provisions of the act of congress, and void. Mr. Justice Peckham, in delivering the opinion of the court, said:

"Competition, free and unrestricted, is the general rule which governs all ordinary business pursuits and transactions of life. Evils as well as benefits result therefrom. In the fierce heat of competition the stronger competitor may crush out the weaker; fluctuations in prices may be caused that result in wreck and disaster; yet, balancing the benefits as against the evils, the law of competition remains a controlling element in the business world."

In *United States vs. Joint Traffic Ass'n*, 171 U. S., 505, a similar agreement between thirty-one railway companies engaged in the manufacture and sale of wire cloth, entered into Coast, was held to be in restraint of trade and within the provisions of the act of congress. Mr. Justice Peckham, speaking for the court, says:

"The prohibition of such contracts may, in the judgment of congress, be one of the reasonable necessities for the proper regulation of commerce, and congress is the judge of such necessity and propriety, unless, in case of a possible gross perversion of the principle, the courts might be applied to for relief."

In passing upon the question whether the Sherman act was in violation of the provisions of the fifth amendment to the Constitution, it is further said:

"Among these limitations and guarantees counsel refer to those which provide that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use without just compensation. The latter limitation is, we think, plainly irrelevant.

"As to the former, it is claimed that the citizen is deprived of his liberty without due process of law when, by a general statute, he is arbitrarily deprived of the right to make a contract of the nature herein involved.

"The case of *Allgeyer vs. Louisiana*, 165 U. S., 578, is cited as authority for the statement concerning the right to con-

tract. In speaking of the meaning of the word 'liberty,' as used in the fourteenth amendment to the Constitution, it was said in that case to include, among other things, the liberty of the citizen to pursue any livelihood or vocation, and for that purpose to enter into all contracts which might be proper, necessary and essential to his carrying out those objects to a successful conclusion.

"We do not impugn the correctness of that statement. The citizen may have the right to make a proper (that is, a lawful) contract, one which is also essential and necessary for carrying out his lawful purposes. The question which arises here is, whether the contract is a proper or lawful one, and we have not advanced a step towards its solution by saying that the citizen is protected by the fifth, or any other amendment, in his right to make proper contracts to enable him to carry out his lawful purposes. We presume it will not be contended that the court meant, in stating the right of the citizens 'to pursue any livelihood or vocation,' to include every means of obtaining a livelihood, whether it was lawful or otherwise. Precisely how far a legislature can go in declaring a certain means of obtaining a livelihood unlawful, it is unnecessary here to speak of. It will be conceded it has power to make some kinds of vocations and some methods of obtaining a livelihood unlawful, and in regard to those the citizen would have no right to contract to carry them on.

"Congress may restrain individuals from making contracts under certain circumstances and upon certain subjects. *Frisbie vs. United States,* 157 U. S., 160.

"Notwithstanding the general liberty of contract which is possessed by the citizen under the Constitution, we find that there are many kinds of contracts which, while not in themselves immoral or *mala in se,* may yet be prohibited by the legislation of the states or, in certain cases, by congress. The question comes back whether the statute under review is a legitimate exercise of the power of congress over inter-state commerce and a valid regulation thereof. The question is, for us, one of power only, and not of policy. We think the power exists in congress, and that the statute is therefore valid."

In determining the meaning of the word "liberty" as used in the Federal Constitution, and as applied to the right of contract, Mr. Justice Peckham in *Addyston Pipe & Steel Co. vs. United States,* 175 U. S., 228, said:

"It has been held that the word 'liberty' as used in the Constitution, was not to be confined to the mere liberty of person, but included among others a right to enter into certain classes of contracts for the purpose of enabling the citizen to carry on his business. *Allgeyer vs. Louisiana*, 165 U. S., 578; *United States vs. Joint Traffic Ass'n*, 171 U. S., 505. But it has never been, and in our opinion ought not to be, held that the word included the right of an individual to enter into private contracts upon all subjects, no matter what their nature and wholly irrespective (among other things) of the fact that they would, if performed, result in the regulation of interstate commerce and in the violation of an act of congress upon that subject."

In *Northern Securities Co. vs. United States*, 193 U. S., 332, it is said:

"That to vitiate a combination, such as the act of congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition."

The doctrine deducible from these cases is that congress, within its proper field of legislation, has power to prevent combinations between persons or corporations, which tend to smother competition, create a monopoly, and to regulate or fix the price of commodities; and that such legislation on the part of congress does not infringe the provisions of the fifth amendment to the Federal Constitution, by which the liberty of contract is guaranteed.

Under the same principles of law it must be held that a state, within its jurisdiction, has power to prohibit combinations which tend to extinguish competition and to fix or regulate the price of any commodity in the state; and that a statute prohibiting such contracts and combinations does not violate the provisions of the fourteenth amendment to the federal Constitution.

These propositions may be taken as finally and definitely settled by the decisions of this court.

As has been shown in a previous division of this argument, the power of a state to enact a statute prohibiting combinations in restraint of trade is a power which extends to and may be exercised in prohibiting such combinations between insurance corporations transacting business in the state.

If a state may legally enact a statute prohibiting combinations which prevent competition in trade, it may, in the exercise of its soverign power, also legally enact a statute which prohibits corporations transacting business within the state from entering into a contract or combination which will tend to extinguish competition in the business of fire insurance.

The power of a state to regulate and control the business of fire insurance within the state being conceded, it follows that the manner of such regulation and the details of statutory enactment must be left to the discretion of the state legislature.

It is not within the province of the courts to determine the method or manner in which the constitutional legislative power of a state shall be exercised. The right to exercise such power is a sovereign right of the state, and its legislature is omnipotent so long as its acts do not infringe upon the federal or state constitution.

By the enactment of the sections of the statute under consideration, the Iowa legislature attempted to prevent a combination between fire insurance companies transacting business in the state. The statute extends to the officers, agents and employees of such companies, and embraces agreements relating to rates to be charged for insurance, amount of commissions to be paid agents, and the manner of transacting the business of fire insurance within the state.

It does not undertake to restrict an insurance company in making contracts with its own officers, agents or employees, or as to the amount of commissions to be allowed agents for procuring insurance; nor does it in the slightest degree restrict or abridge the liberty of such companies, their officers or agents, to enter into fire insurance contracts with persons in the state. These are left to the discretion of the corpora-

tion. It simply prohibits two or more companies, their officers, agents or employees from entering into a contract by which the rates to be charged for insurance, the amount of commissions to be allowed agents, and the manner of transacting the business of fire insurance in the state, shall be agreed upon and fixed by such insurance companies, their officers, or agents.

The power of the state to prohibit combinations of this character cannot be doubted.

Section 1755 prescribes the method by which the auditor of state may ascertain whether a combination, in violation of the provisions of the preceding section, has been entered into between fire insurance companies transacting business in the state.

The power to prohibit carries with it the power to inquire as to a violation of the statute, and to punish for a transgression thereof.

Whether the legislature acted wisely or unwisely in fixing the conditions upon which the business of fire insurance may be transacted in the state, is not a question which this or any any other court can determine. The question of the wisdom of the law rests wholly with the legislature of the state.

It may, however, be very properly said in this connection, that the provisions of the Iowa statute are wise and salutary. In this day of combinations, between all classes of corporations transacting the same character of business, extending from the retail dealers of a city to the gigantic railway systems of the continent, the Iowa legislature demonstrated its wisdom in enacting a statute which prevents a combination between fire insurance corporations transacting business within the state, the effect of which would be to compel the people of Iowa to pay an unreasonable cost for fire insurance.

If the complainants desire to transact the business of fire insurance within the boundaries of the state, they must comply with the provisions of the Iowa statute. Any other rule

would deprive the state of its powers of sovereignty and place the control of its internal affairs in other hands.

Within the limits of the State and Federal Constitutions, the power of the state is supreme. The legislature has not exceeded such limits in enacting the statute under consideration and it must be held to be a valid and constitutional enactment.

Respectfully submitted,

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